

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

DAVID LANE JOHNSON,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE  
PLAYERS ASSOCIATION *et al.*,

Defendants.

Case No. 5:17-cv-00047  
Judge Sara Lioi

**NFL DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S REPLY  
IN SUPPORT OF THE MOTION TO VACATE THE ARBITRATION AWARD**

Defendants National Football League (“NFL”) and National Football League Management Council (“NFLMC,” collectively with the NFL, the “NFL Defendants”), hereby move to strike *Plaintiff David Lane Johnson’s Reply to the NFL Defendants’ Opposition to Plaintiff’s Motion to Vacate the Arbitration Award* (the “Reply”) filed on April 28, 2017 (Doc No. 62) based on Plaintiff’s failure to comply with this Court’s orders. Alternatively, the NFL Defendants request the Court to strike the pages of the Reply that exceed the Court’s express page limitation for reply briefs. *See United States v. Merkosky*, 2008 U.S. Dist. LEXIS 99415, at \*18-19 (N.D. Ohio Dec. 9, 2008) (granting the plaintiff’s request to strike from the record the pages of the defendant’s motion that exceeded the page limitation permitted by the court’s order and Local Rule 7.1).

As set forth in the accompanying Memorandum in Support of this motion, Plaintiff’s reply does not comply with the briefing guidelines of the Court, and Plaintiff did not seek leave of the Court in advance to file a reply in excess of the Court’s page limitation.

Dated: May 2, 2017

/s/ Philip M. Oliss

---

Frederick R. Nance (0008988)

Philip M. Oliss (0066528)

[philip.oliss@squirepb.com](mailto:philip.oliss@squirepb.com)

SQUIRE PATTON BOGGS (US) LLP.

127 Public Square, Suite 4900

Cleveland, Ohio 44114-1304

Telephone: (216) 479-8500

Facsimile: (216) 479-8780

Daniel L. Nash (admitted *pro hac vice*)

[dnash@akingump.com](mailto:dnash@akingump.com)

AKIN GUMP STRAUSS HAUER & FELD LLP

1333 New Hampshire Avenue, NW

Washington, DC 20036

Telephone: (202) 887-4000

Facsimile: (202) 887-4288

*Counsel for Defendants National Football League  
and National Football League Management  
Council*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *NFL Defendants' Motion to Strike Plaintiff's Reply in Support of the Motion to Vacate the Arbitration Award* was electronically filed on May 2, 2017. Notice of this filing will be sent to all Parties by operation of the Court's electronic filing system. The Parties may access this filing through the Court's system.

/s/ Philip M. Oliss

Attorney for the Defendants National Football  
League and National Football Management Council

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

DAVID LANE JOHNSON,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE  
PLAYERS ASSOCIATION *et al.*,

Defendants.

Case No. 5:17-cv-00047  
Judge Sara Lioi

**MEMORANDUM IN SUPPORT OF NFL DEFENDANTS'  
MOTION TO STRIKE PLAINTIFF'S REPLY  
IN SUPPORT OF THE MOTION TO VACATE THE ARBITRATION AWARD**

Defendants National Football League ("NFL") and National Football League Management Council ("NFLMC," collectively with the NFL, the "NFL Defendants"), hereby move to strike *Plaintiff David Lane Johnson's Reply to the NFL Defendants' Opposition to Plaintiff's Motion to Vacate the Arbitration Award* (the "Reply") filed on April 28, 2017 (Doc No. 62) based on Plaintiff's failure to comply with this Court's orders. Alternatively, the NFL Defendants request the Court to strike the pages of the Reply that exceed the Court's express page limitation for reply briefs. *See United States v. Merkosky*, 2008 U.S. Dist. LEXIS 99415, at \*18-19 (N.D. Ohio Dec. 9, 2008) (granting the plaintiff's request to strike from the record the pages of the defendant's motion that exceeded the page limitation permitted by the court's order and Local Rule 7.1).

The Court has given clear briefing guidelines to the parties in this matter. Pursuant to the Court's Initial Standing Order, reply briefs in support of substantive motions, including a motion

to vacate an arbitration award, are expressly limited to ten pages. (Doc. No. 8 at 683.) Yet, Plaintiff's Reply is twenty pages long, double the page length permitted by the Court.

Moreover, in its March 10, 2017 Briefing Order, the Court made clear that "[u]nder no circumstances shall any other supplemental documents be filed in this case until further order of the Court permits it. Any document filed, other than those outlined above, will be stricken from the record and the Court will consider levying sanctions upon the filer." (Doc. No. 51 at 2263.) Plaintiff's twenty-page Reply is in excess of what the Court expressly permitted and effectively circumvents the Court's order that no excess briefing be submitted without prior permission of the Court.

Notwithstanding the Court's direction, Plaintiff has filed two twenty-page reply briefs in support of his motion to vacate the arbitration award without seeking leave of the Court to do so in advance. (*See* Doc. Nos. 61 and 62.) Plaintiff may not now be heard to seek this Court's permission to exceed the page limitation set forth in the Court's Initial Standing Order on the basis of "extensive facts." (Doc. No. 64 at 3773.) Rather, if Plaintiff believed additional pages were necessary and justified, Plaintiff should have made an appropriate request to the Court and provided his basis for seeking to exceed the Court's ten-page limitation prior to filing the Reply.

For the reasons stated above, the NFL Defendants respectfully request that the Court strike Plaintiff's Reply in its entirety, or alternatively, strike pages 11 through 20 of the Reply.

Dated: May 2, 2017

/s/ Philip M. Oliss

---

Frederick R. Nance (0008988)

Philip M. Oliss (0066528)

[philip.oliss@squirepb.com](mailto:philip.oliss@squirepb.com)

SQUIRE PATTON BOGGS (US) LLP.

127 Public Square, Suite 4900

Cleveland, Ohio 44114-1304

Telephone: (216) 479-8500

Facsimile: (216) 479-8780

Daniel L. Nash (admitted *pro hac vice*)

[dnash@akingump.com](mailto:dnash@akingump.com)

AKIN GUMP STRAUSS HAUER & FELD LLP

1333 New Hampshire Avenue, NW

Washington, DC 20036

Telephone: (202) 887-4000

Facsimile: (202) 887-4288

*Counsel for Defendants National Football League  
and National Football League Management  
Council*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Memorandum in Support of NFL Defendants' Motion to Strike Plaintiff's Reply in Support of the Motion to Vacate the Arbitration Award* was electronically filed on May 2, 2017. Notice of this filing will be sent to all Parties by operation of the Court's electronic filing system. The Parties may access this filing through the Court's system.

/s/ Philip M. Oliss  
Attorney for the Defendants National Football  
League and National Football Management Council